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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

In re K.F., a Person Coming Under the
Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

K.F.,

Defendant and Appellant.

A144773

(Contra Costa County
Super. Ct. No. J12-01687
& Solano County No. J42900)

I.

INTRODUCTION

Appellant K.F. appeals both from jurisdictional findings by the Contra Costa Juvenile Court that she aided and abetted the crimes of robbery, burglary and grand theft from the Antioch home of B.D., and from the dispositional order later entered by the Solano County Juvenile Court which imposed a probation condition that she stay away from the Antioch address where the crimes took place. She contends there was no substantial evidence at the jurisdictional hearing that she aided and abetted the crimes, and that the probation condition does not meet the requirements of *People v. Lent* (1975) 15 Cal.3d 481 (*Lent*). She further argues the condition is vague, and is an unconstitutional infringement on her right to travel. We affirm both the jurisdictional findings and the terms of her probation.

II. PROCEDURAL BACKGROUND

A supplemental juvenile wardship petition under Welfare and Institutions Code section 602, subdivision (a) was filed by the Contra Costa District Attorney on August 22, 2014. It alleged that appellant had committed the following crimes: (1) first degree residential burglary (Pen. Code,¹ §§ 459, 460, subd. (a) (count one)); (2) second degree robbery (§§ 211, 212.5, subd. (c) (count two)); and (3) grand theft (§ 487, subd. (a) (count three)). As to the burglary allegation, the petition alleged that the offense was a violent felony because appellant committed the burglary while a nonparticipant was present in the residence (§ 667.5, subd. (c)).

Subsequently, an oral amendment to the petition was made at the request of the prosecutor to dismiss the *second* degree robbery allegation (count two) and to add a fourth count alleging *first* degree robbery (§§ 211, 212.5 (count four)).

A contested jurisdictional hearing was held in Contra Costa County Juvenile Court, at the conclusion of which the supplemental petition, as amended, was found true as well as the special allegation as to count one.

In the meantime, appellant's mother had moved her residence to Benicia, and therefore appellant's case was transferred to the Solano County Juvenile Court for a dispositional hearing.

On March 13, 2015, the Solano County Juvenile Court conducted a dispositional hearing, at the conclusion of which appellant was granted probation subject to her commitment in juvenile hall for 142 days, with credit for 22 days and with the option to serve 30 of the remaining 120 days on electronic monitoring. Her maximum period of confinement was calculated to be 11 years. The juvenile court ordered numerous probation conditions including that appellant stay away from the victim and the address in Antioch where the incident occurred.

¹ All further statutory references are to the Penal Code, unless otherwise indicated.

Appellant's timely notice of appeal was filed on April 7, 2015.

III.

EVIDENCE PRESENTED AT THE JURISDICTIONAL HEARING

B.D., a close friend of appellant's sister and a friend of appellant, testified that on January 23, 2014², she was living in Antioch with her mother. On that day, appellant visited B.D. at the home. B.D. had had a disagreement with appellant's sister, and appellant said she wanted to come over the talk to B.D. about it. After she let appellant into the house, B.D. locked the front door. Appellant was wearing a pink body suit and "like footie pajamas." Her hair was curly in a weave. She appeared to be alone. The two then went to B.D.'s room, which was on the first floor of the two-story home.

After about 15-20 minutes in the bedroom, appellant said she needed to use the bathroom and left the room, closing the door as she left. The bedroom door had been open up to that point. A few minutes after appellant returned, B.D. heard a loud noise. It sounded like someone had dropped something heavy upstairs. B.D. left her room to investigate and found a man on the stairs. He had a beanie covering his face with holes cut out for his eyes and mouth, and he was holding screwdriver. B.D. ran back into her room, where appellant had remained.

When B.D. returned to her room she told appellant that someone was breaking into the house. B.D. then took one of her two cell phones and hid it under her pillow so she could use it to call the police. She knew that the intruder was likely to ask for her phone and feared that if the intruder asked for her phone and she did not produce one, he would hit her.

Appellant then opened the bedroom door and saw another man there, who asked both girls for their phones. He had a woman's scarf covering his face, was wearing a security jacket, and was holding a pair of scissors in a threatening way. Appellant gave him her phone, and B.D. gave him the phone she had not hidden. Appellant then told B.D. to "[g]ive him the other one too." He was a different man than the one B.D. had

² All further references to January 23 occurred in 2014.

seen on the stairs. After giving her phones to the man holding the scissors, he walked out of the bedroom. B.D. walked out behind him and then saw two more men in the hallway. It appeared to B.D. that appellant knew the men standing in the hallway. Appellant did not appear to be afraid and was “too” calm.

B.D. was trying to get to the house alarm, but was stopped by one of the men. She asked if she could go outside but was told to sit down. One of the men punched her and another, who was carrying a backpack, threatened to shoot her. As this was happening, the man with the screwdriver started coming towards her, so she backed up into the living room. She then grabbed the screwdriver and the man punched her in the face, causing her to fall over onto her mother’s television table, breaking it. Appellant remained standing by the bedroom door. When B.D. got up, appellant started to rush the group out of the house, saying something like, “Hurry up because she is going to come after us,” and “Come on. Let’s go.” Two other men then came downstairs holding her mother’s TV. Appellant was talking to the men, but B.D. did not know what was said. All four men then ran out the front door, followed by appellant.

B.D. watched the group leave the house and then pressed the house burglar alarm. She saw two men ran up the nearby hill with her mother’s TV, while the other two ran down the hill through a nearby park. As of the time of her testimony, B.D. was not sure in what direction and with whom appellant ran after leaving the house. B.D. never heard from appellant again after that day. There were no signs that the front door had been damaged. Two TVs were taken, as well as her mother’s Apple Mac Book Pro, B.D.’s backpack, and a video game player. One of the TVs was recovered later that same day by investigating police officers. None of the other property taken was recovered.

Once officers responded, B.D. went around the perimeter of the home with them. In addition to no damage to the front door, no windows were broken. B.D.’s was outside when the incident occurred. Someone had closed the sliding door that was usually kept open for the dog.

B.D. no longer lives in California. She moved out after the incident because she was scared.

A neighbor testified that on January 23 she saw some kids standing near a TV that was on the grass in a yard near her home, which was near B.D.'s. She thought there might be a yard sale going on. She talked to a police officer in front of her home about what she saw. In all she saw five males and one female in the area near her home that morning. All the males were wearing black or dark clothing. The female was in the middle of the group of males. She was wearing some black or red pajama pants, and her hair was large and bushy.

When making these observations, the neighbor testified that she was in her car with her young child on her way to school to pick up her other children. When she saw the group heading to a nearby park, she did not notice if they were carrying anything. It did not look like anything strange to her. She stated that it was when she got home after picking up her children from school, and while she was parking her car, that a police officer approached her.

A second neighbor also testified for the prosecution. He was coming out of his house to get into his truck when he noticed two cars that he did not recognize parked nearby. He then saw a Hispanic male and an African-American male running through the front yard of a home in front of which the two cars had parked. One was carrying a flat screen TV. The young men put the TV inside the trunk of one of the cars and then both cars drove off. The neighbor could not tell their ages from that distance, but testified that they both looked young. He heard a young girl who appeared to be about 17 years old and Hispanic, and who had been near the cars, yell to the young men as they pulled away, "Hey, are you guys gonna leave me here?" One of the cars then stopped, the girl got in, and they took off. The neighbor testified that the girl had been standing near the entrance to a nearby park when he first saw her.

Officer Dimitri Barakos of the Antioch Police Department testified that he was a patrol supervisor on the afternoon of January 23. He was called to the scene of what had been reported as a burglary or robbery. He spoke to the female neighbor when she pulled up in her car. She told Barakos that she had seen five Black males and one Black female in the front yard of a nearby residence, and the males were carrying two TVs. All of the

males were wearing masks and dark clothing. She described the female as having large bushy hair and wearing red pajama pants. Other than those two features, the neighbor could not give the officer any further description of the female. She told the officer that the group all ran in the same direction towards a nearby park. At some point they dropped one of the TVs in a yard along the way to the park.

Officer Eric Johnsen, also with the Antioch Police Department, testified that he too was dispatched to the burglary or robbery scene on the afternoon of January 23. He contacted B.D. when he first arrived. She was upset and crying telling the officer that she had just been robbed.

B.D. told the officer about appellant coming over to her house that day. She told him that after the two talked for a couple of minutes in B.D.'s room, appellant left to use the bathroom. After the robbery appellant left the house, fleeing in the direction of a nearby park with two males. B.D. was shown one of the TVs that was left on a front lawn nearby, and she identified it as belonging to her mother.

Appellant testified on her own behalf. She went over to B.D.'s house on January 23 at B.D.'s invitation. B.D. said she met "some guys" on Instagram and she wanted appellant to meet them too. When appellant arrived she was let into the house and the two went into B.D.'s bedroom. Appellant had been over to the house about 20 times before this. She did not know that B.D. had a dog and never saw one there.

She testified that there was a knock on the door and B.D. went to the door, opened it, and let in two "guys" who joined them in the bedroom. The four of them began just sitting and talking in B.D.'s room. After about five minutes everything changed. One of the males said to hand over their phones, and "they got all aggressive and everything." Both B.D. and appellant handed over their phones. B.D. started to argue with the males, telling them she was not going to hand over anything else. Appellant saw her chance to escape while they were hovering over B.D., and she ran out of the house and past the nearby park. She ended up at a McDonald's, where she used someone's phone to call a friend to come and get her.

Appellant denied that she took anything from B.D.'s house or that she was working with the males to steal anything. She also denied knowing who the males were, or that she had ever seen them before, and further denied that she told B.D. to give the males the other phone that B.D. had hidden under her pillow, or that she went to the bathroom before the males arrived.

Although she admitted she was concerned for B.D.'s safety when she left the house, appellant never contacted her again, nor did she take any steps to have someone contact B.D. or check on her after the incident. Appellant testified that her hair that day was straight and cut short in a "bob."

After counsel completed their respective closing arguments, the court announced that it found the allegations in the petition had been proven beyond a reasonable doubt, including the special allegation that the burglary occurred while at least one nonparticipant was in the home (B.D.). In making these findings, the court explained that it found the testimony of B.D. and the male neighbor to be particularly credible, while that of appellant and the female neighbor was not.

Because appellant was then living in Solano County, the court ordered the matter transferred immediately to that county for disposition.

IV.

DISPOSITION HEARING

After the case was transferred to Solano County, the disposition hearing took place on March 13, 2015. The court heard a victim impact statement from B.D.'s mother. She began by noting that B.D. no longer lived with her at the Antioch address because she was traumatized by the events that occurred on January 23. The mother explained how the incident also traumatized her, noting that she still lives at the home where the invasion took place. She testified that she now keeps the alarm on, even during the day, because she does not know if anyone will come back to her home and do the same thing again. Because she does not know what might happen, she is afraid, and still does not feel safe there. B.D. does not feel safe for her mother.

After hearing from B.D.’s mother and counsel, the court announced its intention to follow the recommendation of the probation department and commit appellant to 142 days in custody less custody credits and with conditions as explained by the court. Formal probation was imposed with conditions as set forth on the record.

As is material to this appeal, one of those conditions of probation was that appellant not have any contact either with B.D. or her mother, and that she stay away from the Antioch address where the January 23 incident took place. No objection was lodged to this condition of probation, or to any conditions of probation imposed by the court.

V.

DISCUSSION

A. Substantial Evidence Supports the True Findings of the Juvenile Court

As noted above, the first of two issues raised on appeal by appellant is that there was no substantial evidence supporting the findings that she aided and abetted the January 23 robbery and burglary, nor was there sufficient evidence that she committed grand theft.

In considering a sufficiency of the evidence claim in juvenile delinquency proceedings, this court applies the same standard of review that is applicable in criminal cases. (*In re Roderick P.* (1972) 7 Cal.3d 801, 808–809.) Thus, this “court must review the whole record in the light most favorable to the judgment below to determine whether it discloses substantial evidence—that is, evidence which is reasonable, credible, and of solid value—such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt.” (*People v. Johnson* (1980) 26 Cal.3d 557, 578.) Substantial evidence includes circumstantial evidence and any reasonable inferences drawn from that evidence. (*In re James D.* (1981) 116 Cal.App.3d 810, 813-814.)

“[A] person aids and abets the commission of a crime when he or she, acting with (1) knowledge of the unlawful purpose of the perpetrator; and (2) the intent or purpose of committing, encouraging, or facilitating the commission of the offense, (3) by act or advice aids, promotes, encourages or instigates, the commission of the crime.” (*People v.*

Beeman (1984) 35 Cal.3d 547, 561.) We conclude that the record contains ample evidence, including strong circumstantial evidence, that appellant aided and abetted the burglary and robbery that occurred at the Antioch home on January 23.

First, the front door to B.D.'s home was locked after she let appellant into the residence. When appellant left B.D.'s bedroom, she shut the door. A short time after appellant's return, B.D. heard noises from the intruders. Later it was discovered that the front door mechanism was undamaged and there were no signs of forced entry around the perimeter of the home. This testimony justifiably leads to the inference that appellant let the perpetrators into the house while she excused herself under the guise of using the bathroom.

When the perpetrators entered B.D.'s bedroom and demanded that B.D. and appellant relinquish their phones, it was appellant who revealed that B.D. had secreted another cell phone under her pillow which she intended to use to call police, telling her to "[g]ive him the other one too."

During the course of the robbery, appellant appeared "too" calm and unafraid. It appeared to B.D. that appellant knew the men discovered standing in the hallway. She talked to them directly near the end of the intrusion, urging them to "Hurry up because she is going to come after *us*," and "Come on. Let's go." (Italics added.) In fact, appellant left the residence with two of the perpetrators. She admitted that B.D. was endangered during the events that day, yet she made no effort to contact B.D. directly or indirectly after the incident to check on her welfare.³

As in virtually all cases relying on eyewitness testimony, there are discrepancies in the various witnesses' testimony about a number of details, such as the direction in which the perpetrators and appellant ran after they left the residence, how many males were involved and what they were wearing, whether any of them were masked, what appellant

³ Appellant testified that for a substantial time after she was arrested she remained in custody with limited access to the outside, and was then told by her probation officer not to have any contact with B.D. However, she made no effort to contact B.D. immediately after events at the residence in Antioch and before her arrest.

was wearing that day, and her hair style. Those discrepancies were for the juvenile court to consider, reconcile, or ignore in evaluating the believability of the witnesses. We note that the testimony of B.D. alone was sufficient evidence to support the true findings made by the juvenile court. (See *People v. Young* (2005) 34 Cal.4th 1149, 1181.)

Consistent with B.D.'s testimony, the male neighbor testified that he saw young men carrying a flat screen TV while running from the vicinity of B.D.'s home. After placing the TV inside the trunk of one of the two cars parked on the street that afternoon that he did not recognize, the neighbor saw a young lady approach one the cars as they were about to leave and shout, "Hey, are you guys gonna leave me here?" One vehicle stopped, the girl got in, and they all drove away. While he could not identify the female as being appellant, the circumstantial evidence supports that conclusion, which is buttressed by the observation of the female neighbor who testified that the female she saw with the group of males carrying the TV was wearing black or red pajama pants.

We note too that in reaching its factual findings, the trial court specifically referenced the superior credibility of witnesses B.D. and the male neighbor, and the lack of credibility exhibited by appellant and the female neighbor. The court's determination of credibility of witnesses is entitled to great weight. " 'To warrant rejection of a witness[']s testimony that has been believed by the trier of fact, there must exist either a physical impossibility that it is true, or its falsity must be apparent without resorting to inferences or deductions. [Citation.] Conflicts and even testimony subject to justifiable suspicion do not justify a reversal, for it is the exclusive province of the trier of fact to determine the credibility of a witness. [Citations.]' (See *People v. Duncan* (1981) 115 Cal.App.3d 418, 429)" (*In re Cheri T.* (1999) 70 Cal.App.4th 1400, 1404.)

While in her briefs on appeal appellant forcefully argues that the discrepancies in the witnesses' testimony deprived the trial court of sufficient evidence to support true findings as to any of the counts, these matters simply go to the weight of the evidence. (See *People v. Mohamed* (2011) 201 Cal.App.4th 515, 522.) In total, there is more than substantial evidence to support the juvenile court's finding that appellant aided and abetted the burglary, robbery, and grand theft that occurred at B.D.'s home.

B. The Condition of Probation Requiring Appellant to Stay Away from the Antioch Address Was Not Unconstitutional

As mentioned above, one of the conditions of probation imposed by the juvenile court on appellant was that she “stay away from [the address] in Antioch, California.” She challenges the condition as being unconstitutionally overbroad, and an unreasonable restriction on her right to travel. We note initially that to the extent her challenge is a facial one, the failure to object does not constitute a forfeiture of the issue on appeal. (See *In re Sheena K.* (2007) 40 Cal.4th 875, 889 [failure to object to probation condition on grounds of unconstitutional vagueness or overbreadth does not forfeit point on appeal if it amounts to facial challenge raising pure question of law].)

However, appellant’s claim that the condition does not meet the well-recognized, three-part standard articulated by our Supreme Court in *Lent*, *supra*, 15 Cal.3d at page 486 (known colloquially as the “*Lent* test”) is a challenge to the reasonableness of a probation condition under the *Lent* test. That claim is forfeited if not objected to at the time of disposition or sentencing. (*People v. Welch* (1993) 5 Cal.4th 228, 230.)

Moreover, appellant’s contentions on appeal that the “stay away” condition is unconstitutional is not a facial challenge. First, it rests on the argument that the clause is unnecessary because B.D. no longer lives in California. Second, she asserts that, as applied, the condition is an unreasonable restriction on her right to travel under the First Amendment of the federal Constitution because the father of her baby lives “about a 15-30 minute walk from the address at issue.” Neither of these objections are facial challenges to the condition of probation. “Applying the [forfeiture] rule to appellate claims involving discretionary sentencing choices or unreasonable probation conditions is appropriate, because characteristically the trial court is in a considerably better position than the Court of Appeal to review and modify a sentence option or probation condition that is premised upon the facts and circumstances of the individual case.” (*In re Sheena K.*, *supra*, 40 Cal.4th at p. 885.)

Because appellant does not make a facial challenge to the “stay away” probation condition, and no objection was made in the lower court raising the challenges to the

condition that she now makes for the first time on appeal, those claims were forfeited and will not be addressed on their merits.

VI.

DISPOSITION

The findings and wardship judgment of the juvenile court are affirmed as is the condition of probation challenged in this appeal.

RUVOLO, P. J.

We concur:

REARDON, J.

STREETER, J.

A144773, *In re K.F.*